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MARY ANN SUSSEX, <i>et al.</i> ,)	
)	
Plaintiff(s),)	Case No. 2:08-cv-0773-RLH-PAL
)	
vs.)	ORDER
)	
TURNBERRY/MGM GRAND)	
TOWERS, LLC, <i>et al.</i> ,)	
)	
Defendant(s).)	

Before the Court is an Order (#43, entered March 31, 2009) and a Memorandum of Decision (#46, entered April 6, 2009), entered by the Honorable Peggy A. Leen, regarding Defendant's Motion to Compel Arbitration (#17), Motion to Continue Hearing (#21), and Motion to Strike (#38).

Defendant filed an Objection (#51) to Judge Leen's Order denying Defendant's Motion to Compel Arbitration, in accordance with Local Rule IB 3-1 of the Rules of Practice of the United States District Court for the District of Nevada. Defendant also filed a Supplement (#54) to its Objection, putting this Court on notice of a Nevada Supreme Court decision, filed April 22, 2009, dealing with the same issue and the same contract in question here. Plaintiffs filed an Opposition (#55) to the Objection, Defendant filed a Reply (#58), and this matter was referred for consideration.

The Court has conducted a *de novo* review of the record in this case in accordance with 28 U.S.C. §636(b)(1)(A), (B), and (C) and Local Rule IB 3-1 and determines that the Order of Magistrate Judge Leen is contrary to state law as recently pronounced by the Nevada Supreme Court. Accordingly, Defendant's Objection will be sustained and Judge Leen's Order and Memo-

1 random Decision will be overruled, reversed and vacated.

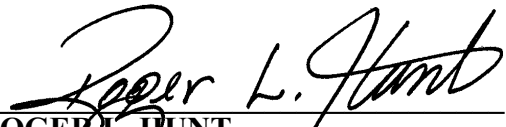
2 The issue presented is whether the arbitration provision of the Purchase Sale
3 Agreements, for the purchase of condominium hotel units at the Signature/MGM Grand project, is
4 valid and enforceable. A related case, involving the same Purchase Sale Agreement, *KJH & RDH*
5 *Investor Group, LLC et al. V. Turnberry/MGM Grand Towers, LLC et al.*, Case No. A547024, was
6 before the Nevada Supreme Court on appeal from a state district court ruling that the arbitration
7 provision was valid.

8 Although Judge Leen delayed her decision for a time, hoping the Nevada Supreme
9 Court would speak to the issue, there came a time, when there being no decision forthcoming by the
10 Nevada Supreme Court, that Judge Leen proceeded to render her decision, based upon a recent,
11 prior decision by the Nevada Supreme Court, *D. R. Horton v. Green*, 120 Nev. 549, 553 (204). She
12 apparently felt the Court would find the facts here sufficiently similar to *D. R. Horton* that it would
13 likely follow suit.

14 A mere two weeks after her Order and Decision, the Nevada Supreme Court
15 published its decision in *KJH & RDH Investor Group* and reached a different result. Although the
16 undersigned does not find Judge Leen's Order and Decision to be clearly erroneous and contrary to
17 law as she then understood it to be, the Nevada Supreme Court has spoken directly to this issue and
18 this Court feels its pronouncement is controlling.

19 IT IS THEREFORE ORDERED that Magistrate Judge Leen's Order (#43) and
20 Memorandum Decision (#46) are overruled, reversed and vacated as relating to the arbitration
21 provision, Defendant's Objection (#55) is sustained, and Defendant's Motion to Compel Arbitration
22 (#17) is granted.

23 Dated: June 16, 2009.

24
25 
26 **ROGER L. HUNT**
 Chief U.S. District Judge